

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

FUNIMATION ENTERTAINMENT  
A TEXAS LIMITED PARTNERSHIP,

Plaintiff,

VS.

DOES 1 - 1,427

Defendants.

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C.A. NO.: 2:11-cv-00269

**NOTICE REGARDING SANCTIONS**

Attached is an order from the Northern District of Texas sanctioning Plaintiff's counsel, Evan Stone, for service of subpoenas prior to a discovery conference. Note that counsel strongly disagrees with these findings and that an appeal with the Fifth Circuit Court of Appeals is already underway<sup>1</sup> on the grounds that, *inter alia*, FRCP 45 does not expressly require a conference prior to the service of subpoenas on a nonparty for the production of electronically stored information. This notion is common enough to be expressed in writing in discovery treatises and in O'Connor's Federal Rules, as edited by Texas' own Michel C. Smith of Seibman, Burg, Phillips and Smith, L.L.P. in Marshall, Texas.<sup>2</sup>

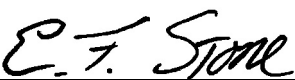
This notice is filed pursuant to said sanction order, despite pendency of the appeal.

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<sup>1</sup> 5th Cir. Case 11-10977

<sup>2</sup> Michael C. Smith, O'Connor's Federal Rules – Civil Trials, 446 (2010) (*Citing* E.g., Guidelines for Discovery of Electronically Stored Information (ESI) (D. Kan.), ¶5; see Rothstein, Managing Discovery of Electronic Information, at 12; Sedona Principles, Second Edition, at 69)

Respectfully Submitted,

s/ 

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